



727 15TH STREET, NW ~ 11TH FLOOR~WASHINGTON, DC 20005
(202) 347-7960 (tel.) ~ (202) 347-7961 (fax)
November 21, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1370

Re: Proposed Rule Implementing the 9 Month CARD Act Provisions

Dear Ms. Johnson:

This comment letter is submitted on behalf of Appleseed, the national office of a nonprofit network of 16 independent public interest justice Centers in the U.S. and Mexico, in response to the Proposed Rule ("Proposed Rule" or "Rule") issued by the Federal Reserve Board ("Board") to implement provisions of the "Credit Card Accountability Responsibility and Disclosure Act of 2009" ("CARD Act" or "Act").

Appleseed appreciates the opportunity to comment on this important matter. Given the passage of the CARD Act of 2009, which codifies and in some places significantly modifies the final amendments to Regulation Z, we believe it is critically important that the Board seek to promote transparency, simplicity, fairness, accountability and access in the market for consumer financial products and services by requiring credit card issuers to engage in fair dealings and transparency in pricing.

In this regard, the Board should ensure:

- Transparency: Disclosure of all costs, including those in the quoted fee for financial products or services, exchange rate fluctuations and other indirect costs, should be provided to consumers prior to transactions in a clear and conspicuous manner that is designed to call attention to the significance and magnitude of the information;
- Simplicity: Consumers should have, understand and be able to use the information prior to transactions to make responsible decisions about consumer financial products or services;

- Fairness: Consumers should be protected from abuse, deception, discrimination and financial pitfalls;
- Accountability: Markets for consumer financial products and services should support true competition and remain sustainable and innovative; and
- Access: Traditionally underserved consumers and communities must have continued access to financial services.

Appleseed and its Centers are dedicated to building a society where opportunities are genuine, access to the law is universal and equal and government advances the public interest. Appleseed has convened industry, regulatory and community stakeholders and piloted a fair exchange disclosure template for remittances, conducted numerous studies and has come to be guided by a set of “Fair Exchange Principles” which we believe produce optimal consumer understanding of complicated financial products and promote a comparative, cost-based analysis of products.

Further information on Appleseed’s Fair Exchange pilot can be found at <http://www.appleseednetwork.org/Portals/0/Documents/Publications/FE%20Final.pdf>

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Appleseed has the following specific comments on the Proposed Rule:

EFFECTIVE DATE OF RULE

Most of the CARD Act provisions addressed in the Proposed Rule are scheduled to become effective on February 22, 2010. However, there has been significant Congressional pressure on the Board to make the new CARD Act requirements effective earlier, including the introduction of legislation to make December 1, 2009 the effective date for the CARD Act provisions scheduled to go into effect in February and August of 2010. Nevertheless, the supplementary information accompanying the Proposed Rule states that “In order to implement the [CARD Act] in a manner consistent with the January 2009 Regulation Z Rule, the Board intends to make the effective date for the final rule pursuant to this proposal February 22, 2010.”

However, the Board is considering whether this February 22, 2010 effective date should apply to both the provisions of the January 2009 Regulation Z Rule, which are scheduled to become effective July 1, 2010, that are not directly affected by the CARD Act and are included in the Proposed Rule as well as new and amended requirements proposed pursuant to the CARD Act.

- Appleseed encourages accelerating the provisions that are scheduled to become effective in July 2010, but only if issuers can provide consumers with accurate and meaningful disclosures prior to implementation. If accelerating the effective

date will compromise the disclosures and information that will be provided to consumers, Appleseed recommends that the Board maintain the original effective date so issuers have time to provide consumers with accurate and meaningful information as required by the Rule.

RETROACTIVE INCREASE LIMITATIONS

Proposed Section 226.55(a) implements the CARD Act requirement that prohibits an issuer from increasing rates, and certain fees or finance charges applicable to any outstanding balance on an account, except under one of six express exceptions. More specifically, the Proposed Rule prohibits any rate or fee increases unless such an increase falls within one of the expressly permitted exceptions set forth in the Proposed Rule.

Accordingly, an issuer would be prohibited from increasing a rate that is contingent on a particular event or occurrence. In addition, an issuer would be required to provide consumers with 45-day advance notice of any rate increase and the right to reject an increase.

- Consistent with the principles of transparency and fairness, Appleseed supports this aspect of the Proposed Rule. Given some of the consequences associated with conditional pricing, we believe the Proposed Rule will promote transparent terms. In this regard, while the cost of credit offered by issuers after the Proposed Rule is adopted might initially appear higher to cardholders, under the Proposed Rule issuers are more likely to disclose all fees, including those embedded in the cost of financial products or services and that were contingent upon a certain behavior. Transparency should facilitate consumer understanding and provide information that consumers can use to make responsible decisions about consumer financial products or services.
- While Appleseed supports the proposal, we think it essential that the Board monitor the impact the Rule has on traditionally underserved consumers and communities that have limited access to financial services. While transparency might translate to more expensive credit, it is important that creditworthy consumers have access to credit. For example, the Board should review and report on an annual basis how the Rule impacts such consumers.
- Appleseed supports 45-day advanced notice and the right to reject. Providing consumers advance notice of significant changes and rate increases along with the right to cancel or opt out of a change in a fee is essential. In particular, requiring financial institutions to provide consumers notice and the right to opt out or cancel certain changes to the terms of the account empowers consumers to take appropriate actions and to take greater responsibility for their very own financial matters. For instance, after receiving notice of a change, consumers can use such information to shop for other products and services and to the extent appropriate, exercise any right to cancel or opt out. In many instances,

consumers might switch to products or services with terms that are more suitable or desirable.

SECTION 109—CONSIDERATION OF ABILITY TO REPAY

Proposed Section 226.51(a) implements the CARD Act prohibition against the opening of a credit card account for a consumer, or the increasing of the credit limit of a consumer's existing account, unless the issuer has considered the ability of the consumer to make the required payments under the terms of the account. Specifically, issuers would be required to have reasonable policies and procedures in place to enable the issuer to consider the consumer's ability to make the required minimum periodic payment.

- Consistent with the principle of responsible lending by creditors and responsible borrowing by consumers, Appleseed supports the proposed requirement that credit card issuers consider a consumer's ability to make required payments prior to extending credit. In particular, a consumer should not be provided debt that that he or she does not have the means to repay. However, the Proposed Rule should make clear that issuers may consider non-traditional income and assets.
- Again, it is essential that the Board monitor the impact the Proposed Rule on traditionally underserved consumers and communities that have limited access to financial services. For example, the Board should review and report on an annual basis how the Rule impacts such consumers. Issuers should not collect income and obligations from the consumer in a manner that will have a chilling effect on the application process and thereby deter consumers, especially consumers in underserved communities from applying for credit. Similarly, it will be important to ensure that issuers comply with Regulation B, which implements the Equal Credit Opportunity Act, and ensure that whatever process used to consider income and obligations does not have a disparate impact on a protected class.

MINIMUM PAYMENT DISCLOSURES

Proposed Section 226.7(b)(12) implements the CARD Act repayment disclosure requirements and essentially tracks the Act in doing so. Specifically, a card issuer must provide the following disclosures on each periodic statement: (a) A specific statement with a bold heading: "**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;" (b) The minimum payment repayment estimate, as described in Appendix M1 of the regulation; (c) The minimum payment total cost estimate, as described in Appendix M1 of the regulation; (d) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement, along with a statement that the estimate is based on the assumption that only minimum payments are made and no other amounts are added to the balance; (e) A toll-free telephone number where

the consumer may obtain from the issuer information about credit counseling services; and (f) Except where the estimate is three years or less: (1) the estimated monthly payment for repayment in 36 months; (2) a statement that the issuer estimates that the consumer will repay the outstanding balance in three years if the consumer pays the estimated monthly payment each month for three years; (3) the total cost estimate for repayment in 36 months; and (4) the savings estimate for repayment in 36 months.

However, if negative or no amortization occurs, the Proposed Rule requires a modified version of the disclosures described above, including a statement that “**Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance show on this statement** because your payment will be less than the interest charged each month.”

- Appleseed strongly supports the proposed minimum payment disclosures. The proposal strikes a good balance by preserving consumer choice while making consumers aware of the cost of certain choices. In this regard, we believe that the proposed disclosures will facilitate consumer understanding of the consequences of making only the minimum payment on an account and even more broadly will facilitate a deeper understanding of credit card transactions in general.

INTERNET POSTING OF CREDIT CARD AGREEMENTS

Proposed Section 226.58 implements the CARD Act provision that requires the Board to establish and maintain a Web site to serve as the central repository for consumer credit card agreements received from issuers. The Proposed Rule requires an issuer to make quarterly submissions to the Board of “credit card agreements,” defined as “a written document or documents evidencing the terms of the legal obligation . . . between a card issuer and a consumer.” Proposed Appendix N sets forth the standards for submitting agreements to the Board. For example, information that might vary from one cardholder to another depending on a cardholder’s creditworthiness or other factors, such as pricing information, must be set forth in an addendum to the agreement.

In addition to submitting agreements to the Board, an issuer would be required to post the agreements submitted to the Board on the issuer’s own Web site. Furthermore, issuers would be required to make available to each consumer his or her specific credit card agreement, by either: (1) posting and maintaining the cardholder agreement on the issuer’s Web site; or (2) promptly providing a copy of the cardholder’s agreement upon request.

- Appleseed strongly supports the requirement that issuers submit cardholder agreements to the Board and make such agreements available to consumers. This requirement is consistent with one of the hallmarks of Appleseed’s Fair Exchange Principles, which is transparency in pricing. That is, Appleseed believes that all fees and charges, including those fees embedded in interest rates or exchange rates, should be clearly disclosed to consumers in an understandable

matter prior to a consumer being obligated on the transaction. We believe that this principle is consistent with the fundamental purposes of the final rules. In connection with the final UDAP and Regulation Z Rules, the Agencies stated the rules are designed to enhance transparency and enable consumers to better assess the costs associated with using their credit card accounts at the time they engage in transactions.

- In addition, Appleseed believes that requiring all credit card issuers to submit all credit card agreements to the Board should facilitate comparison shopping. In this context, we recommend that the Board make the information submitted by issuers, and posted on the Board's Web site, available in a format that facilitates a consumer's ability to comparison shop based on the terms offered, especially rates and fees.

Sincerely,

Betsy Cavendish, Executive Director

Appleseed
727 15th Street, N.W., Suite 1100
Washington, DC 20007
bcavendish@appleseednetwork.org
(202) 347-7960

Annette LoVoi, Director, Financial
Access and Asset Building Program
Appleseed
327 Congress Avenue, Suite 200
Austin, TX 78701
alovoi@appleseednetwork.org
(512) 542-9082